

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Revision Application No. 2 of 2005

Appaji Laxman Kumbhar and ors ..Applicants

VS

Bhikaji Appaji Dhera & Ors..Respondents

Mr.V.S.Talkute for applicants

CORAM: B.H.MARLAPALLE J

Dated 23.8.2005

P.C:

. Heard Mr.Talkute, learned counsel appearing for the applicants.

1. Regular Civil Suit No.26 of 1984 came to be decided exparte on 22.9.1986 and a decree was drawn in favour of the plaintiff on 11.5.1987. The defendant no.1 applied for restoration of the suit by setting aside the exparte decree under Order IX Rule 13 of CPC.After hearing both parties, this restoration application no 1 of 1987 came to be dismissed by the learned Civil Judge, J D at Chandgad vide his order dated 4.11.1998. This order was carried in Misc Civil Appeal No.73 of 2002 which has been allowed by the learned Additional District Judge, Gadhinglaj vide his

order dated 24.8.2004. The order in Misc Application No.1 of 1987 has been set aside alongwith the exparte decree passed in RCS No.26 of 1984 and the lower court has been directed to rehear the suit after giving opportunity to the defendant to file written statement. The plaintiff has challenged the said order in this civil revision application.

2. The trial court held that the defendant had failed to make out a case for sufficient and bonafide cause preventing him from remaining present on the date when the suit was fixed for hearing and he was not entitled to claim restoration of the suit. The defendant had stepped in witness box and stated that the original defendant Appaji who was his father was in his 80s and was bed ridden. It was in these circumstances his father could not remain present before the trial court and file written statement. It appears that prior to applying for restoration of the suit Appaji died. The lower appellate court on assessment of the testimony has held that the approach of the trial court in refusing restoration

application was hyper technical and it was a fit case to restore the suit by setting aside the ex parte decree so that the defendant gets an opportunity to file written statement and contest the suit on merits. It referred to the decision in the case of Sangram Singh vs Election Tribunal AIR 1955 SC 425 on the point raised by the plaintiff that the application for restoration was not tenable. It noted that the defendant had appeared on 15.10.1984 before the trial court and sought time to file written statement. However, no W.S. order was passed on 18.12.1985 and issues were framed vide Exh 36 on 11.9.1986. Depositions of the plaintiff Appaji were recorded. Thereafter the suit was decided on 22.9.1986. It was not the case of the trial court that the application for restoration was filed belatedly. The reasoning set out by the lower appellate court does not suffer from any error apparent on the face of the record and the lower appellate court has not acted in excess of its powers while allowing the appeal.

3. Hence there is no case made out to cause interference with the impugned order passed by the

lower appellate court and the Civil Revision Application is rejected summarily.

4. Writ to go forthwith to the trial court.
Hearing of the suit is expedited and to be decided
by 31st December 2005